

REMARKS

The examiner has restricted the claims to Invention I (Claims 1-17 and 19) and Invention II (Claim 18). Applicant affirms the election of the claims identified as Invention I (Claims 1-17 and 19).

The examiner has expressed comments regarding the appropriateness of the Title and Abstract for the present application. The Title and Abstract have been amended as appropriate.

The Section 112 first paragraph rejections:

Claims 1-17 and 19 are rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention.

The examiner states that the step of adjusting the stress via “deposition parameter modification” in Claims 1, 2, 4 and 9 is nonenabling to one skilled in the art. The parameters affecting the intrinsic stress during filter fabrication are well known in the art, and one of skill in the art understands that adjusting such deposition parameters will affect the intrinsic stress. The examiner’s assertion of nonenablement is improper and withdrawal of the rejection of Claims 1-17 and 19 on that basis is solicited.

The Section 112 second paragraph rejections:

Claims 1-17 and 19 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claims 1-6, 11, 13, 14, 16 and 17 have been amended to correct informalities as noted by the examiner.

The examiner states that the terms “high index” and “low index” are relative terms which renders Claims 1-7, 12-13 and 15-17 indefinite. Applicant submits that such terms are well

known in the art and do not render the claims indefinite. The claims have been amended to specify the index of refraction of the material as high or low as appropriate. Examples of materials with a high and low index of refraction are disclosed on page 5, lines 8-12 and page 7, line 28 to page 8, line 3 of the specification. Reconsideration and withdrawal of the indefiniteness rejection of Claims 1-7, 12-13, and 15-17 is hereby solicited.

The examiner states that the term “high energy” is a relative term which renders Claims 1 and 7 indefinite. The term “high energy” is contextually used in the phrase “reflection high energy electron diffraction” (hereinafter “RHEED”). RHEED is a term well known in the art as a process for monitoring layer growth during deposition processes. Requiring the Applicant to further define “high energy” in a common industry term is improper. Reconsideration and withdrawal of the rejection of Claims 1 and 7 is hereby solicited.

With respect to Claim 5, the examiner states that the high index layer is formed from an epitaxial process in independent Claim 1. The examiner has misread the limitations of Claim 5. Claim 5 depends from independent Claim 2. There is no limitation in Claim 5, in any intervening claims, or in the base claim requiring the high index layer to be formed from an epitaxial process. Hence, the examiner’s rejection of Claim 5 is improper and must be withdrawn. Reconsideration and withdrawal of the rejection of Claim 5 is hereby solicited.

The Section 103(a) rejection:

Claims 1-17 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,753,319 to Knapp, et al. (“Knapp”) in view of U.S. Patent No. 5,403,433 to Morrison, et al. (“Morrison”).

The examiner appears to have overlooked claim language distinguishing the claimed inventions from the cited references or has misread what the cited references fairly disclose.

Each of the claims is directed to a process for optical filter construction or a method of making an optical filter including the step of forming a layer of amorphous carbon. There is no disclosure or suggestion from the cited references of such processes or methods and the examiner has not provided, and cannot provide, any basis for modifying the teachings of the cited references to make obvious such processes or methods.

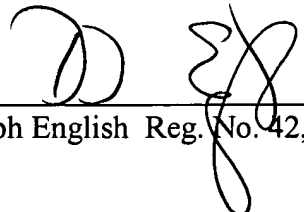
Moreover, there does not appear to be any disclosure or suggestion from either Morrison or Knapp of monitoring intrinsic stress during the construction of an optical filter or adjusting intrinsic stress via deposition parameter modification as claimed. Therefore, even if Knapp and Morrison are combined they do not disclose, teach or suggest the limitations described above. Thus, a prima facie case of obviousness has not been made. Hence, the rejection under 35 U.S.C. § 103(a) is improper and must be withdrawn.

Reconsideration and withdrawal of the rejection of Claims 1-17 and 19 is hereby solicited.

Consideration and allowance of new Claims 20-26 is solicited. No new matter has been added.

A further and favorable Action and allowance of all claims is solicited.

Respectfully submitted,

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